IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5412 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KISHORE D SHETH - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

UNSERVED-EXPIRED (N) for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/09/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Dy.Secretary (Appeals), Revenue Department, State of Gujarat dtd.25/4/1990 in Revision Application No. SRD-3 OF 1989 in dismissing the same and confirming the order passed by the Collector, Jamnagar dtd.9/10/1989 in Revision Application No.6 of 1989 as well as the order passed by the Assistant Collector, Jamnagar dtd.28/5/1989 in RTS Revision Application No.66 of 1988.

2. The dispute is with regard to the land bearing Survey No.43/Paiki, admeasuring 2 Acres of land situated at Village Padana, Taluka Jodia and the same was originally owned by one Velubha Jilubha. The petitioner purchased the said land in question by registered sale deed and the name of the petitioner was mutated in the revenue record vide Mutation Entry No.254 dtd.10/5/1987 and the said entry came to be certified on 22/7/1987. The Assistant Collector, Jamnagar took the said entry into suo-motu review in exercise of the powers under Rule

108(6) of the Land Revenue Rules on the ground that the sale in favour of the petitioner is in breach of sec.54 of the Gharkhed Tenancy, Settlement and Agricultural Lands Ordinance, 1949 (hereinafter referred to as "the Gharkhed Ordinance, 1949" for convenience), as the petitioner was non-agriculturist and show cause notice was issued and after hearing the petitioner, the Assistant Collector, Jamnagar set aside the entry No.254 by holding that the sale transaction in favour of the petitioner is hit by the provisions of Sec.54 of the Gharkhed Ordinance, 1949 and further directed the Mamlatdar to evict the petitioner from the land in question. Being aggrieved by the order passed by the Assistant Collector, Jamnagar dtd.28/5/1989 in Revision Application No.66 of 1988, the petitioner preferred Revision Application No.6 of 1989 before the Collector, Jamnagar and the Collector by order dtd.9/10/1989 dismissed the said revision application confirming the order passed by the Assistant Collector dtd.20/3/1989. Being aggrieved and dissatisfied with the order passed by the Collector, Jamnagar dtd.9/10/1989 in Revision Application No.6 of 1989, the petitioner preferred further revision application under sec.211 of the Bombay Land Revenue Code before the Deputy Secretary (Appeals), Revenue Department, State of Gujarat being

Revision Application No.3 of 1989 and the Dy.Secretry (Appeals), Revenue Department, State of Gujarat by its judgement and order dtd.25/4/1990 dismissed the said revision application and confirmed by the orders passed by both the authorities below. Being aggrieved by and dissatisfied with the judgment and order passed by the Dy.Secretary (Appeals), Revenue Department, State of Gujarat dtd.25/4/1990 in Revision Application No.SRD-3 of 1989, the petitioner has preferred the present under Articles 226 and 227 of the Constitution of India.

3. This petition was filed by Mr.G.R.Shaikh, learned advocate, but unfortunately, he has expired during the pendency of the present petition. This court has tried to serve the notice upon the petitioner but the same is returned as unserved and therefore, this court has no other alternative but to decide the present petition on the basis of the pleadings and the materials on record, as the matter is of 1990.

4. It appears from the record and the pleadings that it is the case of the petitioner that the petitioner purchased the land in question by registered sale deed and the revenue authority, while considering the

RTS proceedings has no jurisdiction to set aside the validity of the transaction and/or the sale deed and for the breach of any other law and the revenue authority has no jurisdiction and/or authority to cancel the entry. It also the case of the petitioner that the revenue department while exercising the powers under the RTS jurisdiction has no authority and/or jurisdiction to direct to evict the petitioner and therefore, the order passed by the Assistant Collector is without jurisdiction and the same was not required to be confirmed by the Collector as well as the Secretary (Appeals).

5. Mr.M.R.Mengade, learned AGP for State has tried to support the order passed by the aforesaid authorities below and has submitted that as the transaction in question in favour of the petitioner is hit by the provisions of Sec.54 of the Gharkhed Ordinance, 1949 and the same was in favour of non-agriculturist, the authorities below were justified in qushing and setting aside the entry and directing the Mamlatdar to evict the petitioner from the land in question. Consequently, it is requested to dismiss the present petition.

6. Heard the learned advocates appearing on behalf of the parties and

considered the evidence on record. It is not in dispute that the petitioner is the owner of the land in question who has purchased the the land by registered sale deed. If the Assistant Collector is of the opinion that the transaction and/or sale is in favour of the petitioner is hit by the provisions of Sec.54 of the Gharkhed Ordinance, 1949, then he should have directed the competent authority to initiate the proceedings in breach of the provisions of Sec.54 of the Gharkhed Ordinance, 1949, but he could not have set aside the entry on the ground that the same is in breach of sec.54 of the Gharkhed Ordinance, 1949. This Court in the case reported in 2005 (9) GHJ 634 has held that the revenue authority is bound to give effect to sale deed in the revenue record. However, if the authority is of the opinion that the said transaction is in breach of any other law, then in that case, an additional Mutation Entry can be mutated in the revenue record itself that according to the authority, the same is in breach of provisions of particular Act, breach of which is alleged and can refer the dispute and/or the matter to the competent authority for initiation of the proceedings. In the present case as stated hereinabove, the Entry is set aside only on the ground that the same is in breach of the provisions of Sec.54 of the Gharkhed Ordinance, 1949. Therefore, relying upon the

aforesaid decision of this Court while restoring Entry No.254 dtd.10/5/1987, an additional entry can also be made in the revenue record that the said transaction is in breach of the the provisions of sec.54 of the Gharkhed Ordinance, 1949 and the same will not preclude the competent authority from initiating the proceedings for breach of sec.54 of the Gharkhed Ordinance, 1949.

7. For the reasons stated hereinabove, the petition succeeds. The impugned judgement and order passed by the Addl.Chief Secretary (Appeals), Revenue Department, State of Gujarat dtd.25/4/1990 in Revision Application No.SRD-3 OF 1989, order passed by the Collector, Jamnagar dtd.9/10/1989 in Revision Application No.6 of 1989 as well as order passed by the Assistant Collector, Jamnagar dtd.20/3/1989 in Revision Application No.RTS-66 of 1988, are hereby quashed and set aside and the Mutation Entry No.254 dtd.10/5/1987 with respect to the land in question being land bearing Survey No.43/Paiki of village Padana, Taluka Jodia, District Jamnagar, ad-measuring 2 Acres is restored. However, the revenue authority is hereby directed to make an additional entry in the revenue record that the transaction / sale in favour of the petitioner is in breach of

provisions of Sec.54 of the Gharkhed Ordinance, 1949 and the restoration of the Mutation Entry will not preclude the Competent Authority to institute the proceedings, if the same is of the opinion that the sale transaction in question is hit by Sec.54 of the Gharkhed Ordinance, 1949. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R. SHAH,J.)

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